



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**WAGGONER CARR  
ATTORNEY GENERAL**

November 26, 1965

Honorable Robert S. Calvert  
Comptroller of Public Accounts  
Austin, Texas

Opinion No. C-552

Re: Validity of appropriation  
to the Upper Red River Flood  
Control and Irrigation Dis-  
trict.

Dear Mr. Calvert:

You have requested the opinion of our office on whether the Upper Red River Flood Control and Irrigation District can use the appropriation out of the General Revenue Fund of the State to the Upper Red River Flood Control and Irrigation District. The Legislature in the current General Appropriation Act (House Bill 12, Acts of the 59th Legislature, Regular Session, 1965) made the following appropriation to the Upper Red River Flood Control and Irrigation District:

**"UPPER RED RIVER FLOOD CONTROL AND  
IRRIGATION DISTRICT**

**For the Year Ending  
August 31, 1966**

There is hereby appropriated out of the General Revenue Fund to the Upper Red River Flood Control and Irrigation District for the purpose of placing a water gauging station at the Prairie Dog Fork Bridge in Hall County, and for the purpose of placing a siltation gauge at said site and for the necessary expenses of travel, research, and other expenses necessary in collecting information necessary for a study of the water potentialities of the Prairie Dog Fork of the Red River, the sum of.....

**\$5,000"**

The Upper Red River Flood Control and Irrigation District was created by the provisions of Article 8280-122, Vernon's

Civil Statutes. We quote the pertinent parts:

"Section 1. There is hereby created within the State of Texas, in addition to the districts into which the State has heretofore been divided, a conservation and reclamation district to be known as the 'Upper Red River Flood Control and Irrigation District' (hereinafter called the District) and consisting of that part of the State of Texas which is included within the Counties of Briscoe, Hall, and Childress. Such District shall be and is hereby declared to be a governmental agency and body politic and corporate, with the powers, rights, privileges, and functions hereafter specified, and the creation of such District is hereby declared to be essential to the accomplishment of the purposes of Section 59 of Article 16 of the Constitution of the State of Texas, including (to the extent hereafter authorized) the control, storing, preservation, and distribution of waters of the Prairie Dog Fork of Red River and its tributaries for the purpose of protecting the lives and property of the inhabitants of the territory affected by the Prairie Dog Fork of Red River, its tributaries, and the streams to which it is a tributary, and in addition the reclamation, conservation, draining, and irrigation of lands within the District. Nothing in this Act or in any other Act or Law contained, however, shall be construed as authorizing the District to levy or collect taxes or assessments, or in any way to pledge the credit of the State.

"Sec. 2. In accordance with the limitations and provisions of this Act, the District shall have and is hereby authorized to exercise the following powers, rights, privileges, and functions:

"(a) to control, store, and preserve, within the boundaries of the District, the waters of the Prairie Dog Fork of Red River and its tributaries, for the reclamation and irrigation of the lands of the District, and to use, distribute, and sell the same, within the boundaries of the District for any such purpose;

"(b) to prevent or aid in the prevention of damage to person or property from the waters of the Prairie Dog Fork of Red River and its tributaries;

"(m) to make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred upon it by this Act;

"(o) to do any and all other acts or things necessary or convenient to the exercising of the powers, rights, privileges, or functions conferred upon it by this Act or any other Act or law.

"Sec. 8. Any and every indebtedness, liability, or obligation of the District, for the payment of money, however entered into or incurred, and whether arising from contract, implied contract or otherwise, shall be payable solely (1) out of revenue received by the District and not held in trust by virtue of any prior lien or agreement, or (2) if the Board shall so determine out of any fund received by the District from grants or loans made to the District by the United States Government or corporation or agency created by or designated by it.  
(Emphasis supplied)

Section 59 of Article 16 of the Texas Constitution provides for the creation of such a flood control and irrigation district as is being here considered and expressly declared that the carrying out of such purposes or uses shall be "public rights and duties." We have heretofore held in

Opinion No. C-436, that this constitutional provision and statutes enacted pursuant thereto are to be construed together and given a broad and liberal construction in order to effectuate the intent of the people and the legislature. We also held that such a statute in view of the mandatory public purpose and duty carries with it by necessary implication the authority to do whatever is reasonably necessary to effectuate such purpose.

It is well settled that water, floor control, and irrigation districts possess such powers as are expressly granted by statute, and also those necessarily or fairly implied, that are essential to the accomplishment of the declared objects and purposes of the districts. 94 C.J.S. 293, 294, 71, Waters, Secs. 321, 243(5); Attorney General's Opinion C-436, supra.

It affirmatively appears from the purposes and powers, expressly granted and those necessarily implied, by Article 8280-122 that the Legislature had the authority to make the \$5,000 appropriation out of the state's General Revenue Fund, for the stated purposes.

Section 8 of Art. 8280-122 merely requires that the District, in incurring any indebtedness, liability, or obligation for the payment of money, shall pay for same only out of revenue received by the District and not held in trust by virtue of any prior lien or agreement, or out of any fund received by the District from grants or loans by the federal government or agency created by or designated by it. We do not construe the legislature's language to prohibit expenditures by the District from state legislative appropriations. We construe the section of the statute as permitting the District's expenditure of such a state legislative appropriation as was here made. Such state revenues are "revenues received by the District and not held in trust by virtue of any prior lien or agreement".

The word "revenue" as used in the statute is neither explained, defined, nor limited in its meaning. It should be considered to have been used in its usual, ordinary sense so as to include any public moneys received by a state agency or its subdivisions from whatever source derived and in whatever manner. See 37A Words & Phrases 262, et seq., under "Revenue"; and 1965 Pocket Part, p. 32, and cases cited.

Giving the statute and the word "revenue" a liberal and reasonable construction in the light of the declared public policy of this state in such conservation legislation, we therefore hold that the appropriation out of the General Revenue Fund to said District may be validly expended by it for the stated purposes.

S U M M A R Y

Article 8280-122, Vernon's Civil Statutes, creating the Upper Red River Flood Control and Irrigation District, is sufficient pre-existing law to provide a basis for an appropriation, and the appropriation in question may be expended by the District for the purposes stated therein.

Yours very truly,

WAGGONER CARR  
Attorney General

By Kerns B. Taylor  
Kerns B. Taylor  
Assistant

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APPROVED:  
OPINION COMMITTEE

W. V. Geppert, Chairman  
Linward Shivers  
Phillip Crawford  
Malcolm Quick  
Scott Garrison

APPROVED FOR THE ATTORNEY GENERAL  
By: T. B. Wright